REMARKS

Claims 1-5 are pending in the application. In a final Office Action mailed on March 17, 2006, all claims were rejected under 35 U.S.C. § 112. Applicant has amended Claims 1 and 4. In view of the foregoing amendment to Claims 1 and 4, applicant respectfully submits that all claims are in condition for allowance.

Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 1-5 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action sets forth a position that the limitation of "substantially" does not appear to have support in the application as filed. Although applicant respectfully disagrees with this position as the term "substantially" is a term well known to one of ordinary skill in the art, applicant has amended the independent claims to further prosecution.

It is well-known and accepted that when a term of degree is present as a claim limitation, the specification is examined to determined whether it provides some standard for measuring that degree, and if not, a determination is made as to whether "one of ordinary skill in the art, in view of the prior art and status of the art, would be nevertheless reasonably appraised of the scope of the invention." M.P.E.P. § 2173.05(b), page 2100-2108. As such, applicant respectfully submits that one of ordinary skill in the art, upon reviewing the specification, the prior art and the status of the art, would very reasonably conclude that the term "substantially" is a modifier implying approximate, rather than perfect measurement. As a non-limiting example, one of ordinary skill in the art would understand that the term "substantially," as used in the context of the independent claims, is intended to cover situations wherein one would avoid infringement simply by placing a *de minimis* amount of core material into areas adjacent the shoe load introduction portion. Accordingly, applicant respectfully submits that the claims as currently amended to

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remove the term "substantially" include such *de minimis* intrusions into the shoe load introduction production and, therefore, are within the scope of the claims. Again, to further prosecution, applicant has simply removed the term "substantially" but has not surrendered claim scope.

In view of the foregoing amendment to Claims 1 and 4, applicant respectfully submits that all claims are now in condition for allowance.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 1-5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action sets forth the position that the term "substantial" is unclear because a physical object can be either present or absent, but not "substantially" present or absent, as Claims 1 and 4 recite. Applicant respectfully disagrees.

As noted above, applicant disagrees with the Office Action's position that the term "substantially" is either indefinite or lacks support in the application as filed. Specifically, it is well known and well settled in the case law that such terms of approximation are appropriate as long as the claim scope is clear. In the context of the present application, the term "substantially" is a meaningful modifier implying approximate rather than perfect measurements.[1]

Applicant nevertheless has deleted the term "substantially" from the above limitations to further prosecution.

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[1] *See Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 67 U.S.P.Q.2d 1876 (Fed. Cir. 2003) and *Anchor Wall Systems v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 67 U.S.P.Q.2d 1865 (Fed. Cir. 2003).

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In view of the foregoing, applicant respectfully submits that all claims are in condition for allowance. The Examiner is invited to telephone the undersigned with any remaining issues regarding this matter.

Respectfully submitted,
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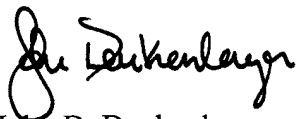

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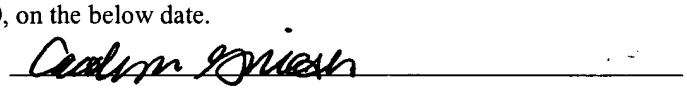
Date: July 17, 2006 

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